

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1602.00
COMPLAINT INVESTIGATOR:	Jane Taylor-Holmes
DATE OF COMPLAINT:	July 31, 2000
DATE OF REPORT:	August 28, 2000
REQUEST FOR RECONSIDERATION:	yes (no revisions resulted from reconsideration)
DATE OF CLOSURE:	October 12, 2000

COMPLAINT ISSUES:

Whether the New Albany-Floyd County Consolidated Schools violated:

511 IAC 7-4-4 with regard to the school's alleged failure to provide special education services to a student enrolled in a private school;

511 IAC 7-10-3(o) with regard to the school's alleged failure to conduct a comprehensive reevaluation at least every 36 months;

511 IAC 7-10-3(e) with regard to the school's alleged failure to conduct an educational evaluation and convene a case conference committee within 40 instructional days from the date of the parent's written request;

511 IAC 7-3-23 and 511 IAC 7-4-1(b) with regard to the school's alleged failure to provide the student a free appropriate public education; and

IC 20-1-6-3(g) with regard to the school's alleged failure to award credit for schoolwork completed by a student with a disability on the same basis as it is awarded to nondisabled students.

During the course of the investigation, an additional issue was identified, which is:

Whether the New Albany-Floyd County Consolidated Schools violated:

511 IAC 7-12-1(g)(5) with regard to convening a case conference committee meeting when a student who has been receiving special education elsewhere moves into the geographic jurisdiction of the public agency.

FINDINGS OF FACT:

1. The student (the "Student") is 18 years old, and will be beginning his senior year at the local high school (the "School").
2. The Student was identified eligible for special education and related services as a student with a learning disability ("LD") when he was eight years old. The Complainant unilaterally enrolled the Student in an out-of-state private school for students with a LD (the "Private School") when the Student was in the fourth grade. The Student remained at the Private School until being re-enrolled in the local school corporation for his ninth grade year at the local middle school (the "Middle School").

3. Upon the Student's re-enrollment, the case conference committee did not convene to discuss that the Student had been receiving special education services. The Student was enrolled as a general education student at the Middle School.
4. The Student's grades for the ninth grade were within the "C" and "D" range. During the tenth grade at the local high school, the Student incurred 41 absences, and received primarily failing grades. The Student has passed both portions of the statewide graduation examination.
5. The first semester of his junior year, the Student incurred eight absences, and received passing grades in all classes except U.S. history. During the second semester, the Student incurred 16 ½ absences and received primarily failing grades.
6. The Student repeated his junior year during the 1999-2000 school year. During the first semester, the Student attended the School part-time, and the local school of technology (the "Technology School") part-time. During the second semester, the Student attended the local alternative school and the Technology School.
7. The Student's attendance report for his computer programming class at the Technology School indicates that from August 18, 1999, to May 23, 2000, he incurred a total of 41 days of absences and 12 tardies. Every three tardies equals one missed day.
8. The absence policy found in the Technology School's student handbook states that every student is required to complete one day of make up time for every absence or tardy over eight days. If a student does not complete the missed days, no credit is given for the semester. A student can make up missed days by: (1) working out an agreement with the instructor and submitting satisfactory completion of work in accordance with the agreement; or (2) attending Saturday school at the Technology School. The Student was aware of the two provisions, but made limited use of either of the provisions. As a result, the Student did not receive credit for his computer class at the Technology School.
9. The Complainant had the Student independently evaluated on February 23, 2000, and March 22, 2000.
10. The Complainant contends that she had numerous conversations with the staff at the School early in the 1999-2000 school year regarding the Student's academic difficulties and the need for an educational evaluation. No documentation was submitted to substantiate her assertions.
11. The Director reported that in the middle of May 2000, the Complainant contacted the local special education office and reported that the Student was not passing his classes at the Technology School, and had been declining academically for the past several months. The Complainant shared that she had an independent evaluation completed earlier in the year, and that the Student had previously been identified as a student with a LD. It was at this time that the Complainant requested that the local school corporation conduct an educational evaluation.
12. The Complainant signed a *Parent Permission for Evaluation* form on May 31, 2000, for the Student to be evaluated by the local school corporation for special education and related services.
13. The last day of the 1999-2000 school year was May 26, 2000.
14. The Student met with the local school corporation's psychologist (the "Psychologist") on May 31, 2000, and completed portions of the evaluation process. Portions of several of the achievement measures had been administered as part of the independent evaluation and were supplements to

part of what the Psychologist administered.

15. As of the filing of this complaint, a classroom observation of the Student in the general education classroom by a member of the multidisciplinary team had not yet occurred.
16. The 2000-01 school year began on August 16, 2000.

CONCLUSIONS:

1. Finding of Fact #2 indicates that the Student was unilaterally enrolled in a private school for students with LD outside the state of Indiana and outside the local school corporation's responsibility to provide special education and related services. The School is not required to provide special education and related services to a student who has been unilaterally enrolled in an out-of-state private school. No violation of 511 IAC 7-4-4 occurred.
2. Findings of Fact #2, and #3 through #12 indicate that the Student was once eligible for special education and related services in the local school corporation, and received such. The Findings also indicate that the Student received special education services at the Private School prior to his re-enrollment in the local school corporation; and therefore, when presenting the Student for re-enrollment, the case conference committee should have convened. A violation of 511 IAC 7-12-1(g)(5) occurred.
3. Findings of Fact #2, and #3 through #12 indicate that the Student was once eligible for special education and related services in the local school corporation, and received such. When presenting the Student for re-enrollment in the local school corporation after having been at the Private School, the case conference committee did not meet to discuss the Student's previous special education services. Therefore, the Student was never re-evaluated so that the case conference committee could determine if the Student continued to be a student in need of special education and related services, or if the Student should have been declassified. The local school corporation had a requirement to conduct a comprehensive re-evaluation of the Student at least every 36 months, since the Student was never determined to be ineligible for services. A violation of 511 IAC 7-10-3(o) occurred.
4. Findings of Fact #11, #12, #13, and #16 indicate that the last day of the 1999-2000 school year was May 26, 2000, and the Complainant gave written consent on May 31, 2000. Therefore, the initiation of the 40 instructional days required for the evaluation process to be completed did not begin until August 16, 2000. The local school corporation has until October 11, 2000, to complete the multidisciplinary evaluation and conduct the case conference committee meeting to determine eligibility. No violation of 511 IAC 7-10-3(e) occurred.
5. Findings of Fact #2, and #3 through #12 indicate that the Student was once eligible for special education and related services in the local school corporation, and received such. When presenting the Student for re-enrollment in the local school corporation after having been at the Private School, the case conference committee did not meet to discuss the Student's previous special education services. Therefore, the Student was never re-evaluated so that the case conference committee could determine if the Student continued to be eligible for services, or if he should have been declassified. A violation of 511 IAC 7-3-23 and 511 IAC 7-4-1(b) occurred with regard to providing the Student a free appropriate public education.
6. Findings of Fact #7 and #8 indicate that the Student did not earn credit in his computer programming class due to excessive absences, nor did he take advantage of the opportunities afforded him to make up the missed work. Further, the Student was not under the protection of

Article 7 until May 31, 2000, when the Complainant gave written consent for an educational evaluation. No violation of IC 20-1-6-3(g) occurred.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

The New Albany-Floyd County Consolidated Schools shall:

1. complete the Student's educational evaluation and conduct the case conference committee meeting to determine if the Student's eligibility for special education and related services. If the Student is eligible, the case conference shall discuss the need for compensatory services. A copy of the case conference committee report shall be submitted to the Division no later than September 29, 2000.
2. submit a statement assuring that a case conference committee shall convene for any student who previously received special education and related services and moves into the geographic area of the public agency. A copy of the assurance statement shall be submitted to the Division no later than September 29, 2000.
3. conduct an inservice training with all local school corporation case conference coordinators with regard to the required circumstances for a case conference committee to convene. A copy of the inservice training agenda, along with an attendance roster of those participants by signature and title, shall be submitted to the division no later than September 29, 2000.